

Application Number 10/788,695  
Amendment dated March 18, 2008  
Response to Office Action mailed January 2, 2008

### **REMARKS**

This Amendment is responsive to the Office Action dated January 2, 2008. Applicant has amended claims 1, 3, 4, 7, 8, 14 and 16 and has added claims 19-25. Claims 1-25 are pending upon entry of this amendment.

#### **Claim Objections**

In the Office Action, the Examiner objected to claims 4 and 7 because of informalities. Applicant has amended claims 4 and 7 to overcome the informalities in the manner recommended by the Examiner.

#### **Claim Rejection Under 35 U.S.C. § 112**

In the Office Action, the Examiner rejected claim 14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated that the phrase "such as" renders the claim indefinite.

Applicant has amended claim 14 for purposes of clarification. Applicant submits that claim 14, as amended, particularly points out and distinctly claims the subject matter, as required by 35 U.S.C. 112, second paragraph. Particularly, Applicant has deleted the phrase "such as a Merkle Hash Tree" from claim 14. Applicant has added claim 19 to specify that "the iterative hash construct comprises a Merkle Hash Tree." No new matter is added by new claim 19.

Applicant respectfully requests withdrawal of the 35 U.S.C. § 112, second paragraph rejection for claim 14.

#### **Claim Rejection Under 35 U.S.C. §§ 102 and 103**

In the Office Action, the Examiner rejected claims 1-13 and 15-18 under 35 U.S.C. § 102(b) as being anticipated by Young (US 6,477,522). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Young fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C.

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§ 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

Applicant has amended independent claim 1 to further clarify the invention. For example, as amended, claim 1 now recites, "a prioritization scheduler that tracks the latency and throughput of all channels to the source servers while downloading data of the file from the plurality of source servers in parallel." Amended claim 1 further requires that the prioritization dynamically adjust the download schedule based on the latency and throughput while downloading the file from the plurality of source servers in parallel to control download performance."

Young teaches a system where a computing device determines which server provides the best throughput based on downloading different portions of a file from different servers, or downloading the same portion of a file from different servers.<sup>1</sup> Young makes clear that the Young system sequentially downloads a portion of the file from different servers; the download of on portion "ends" before starting the download of the next portion from a different server:

An applet intercepts the request for the file from the browser and determines the best server to provide the file. When the request is intercepted, the applet reads a list of available file transfer protocol (ftp) locations from which to download the file. The list may be hidden text in an hypertext markup language (HTML) page, or may actually be provided by a link on a server. The applet or other type of program then may ping each site to prioritize the list based on shortest response time. **A first portion of the file is downloaded from one site, and throughput measurements tracked. Using a reconnect internet protocol command to identify where the first download ended, a second portion of the file is downloaded from the next site on the list, again with throughput measurements tracked.** This process is repeated for further portions of the file, and the location with the best throughput is selected to complete the file transfer.<sup>2</sup>

The computing device then downloads from only the one server that provided the best throughput.<sup>3</sup> In a further embodiment, the computing device checks the throughput from the selected server.<sup>4</sup> If the throughput from the selected server drops below a threshold, the

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<sup>1</sup> Young, col. 2, lines 5-15.

<sup>2</sup> Young, Summary.

<sup>3</sup> Young, col. 2, lines 11-13.

<sup>4</sup> Young, col. 2, lines 16-18.

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computing device either selects the already determined next best server, or recalculates for the next best server, and continues to download only from the next best server.<sup>5</sup>

In contrast, amended claim 1 now requires that the prioritization scheduler download data of the file "from the plurality of source servers in parallel and dynamically adjusts the download schedule while downloading the file from the plurality of source servers in parallel." In other words, amended claim 1 requires that the apparatus download the file from a plurality of servers in parallel while dynamically adjusting the download schedule. Young teaches downloading data of a file from only one server at a time. In contrast, amended claim 1 requires downloading data of a file from a plurality of source servers in parallel.

For at least the reasons stated above, Young fails to teach or suggest each and every limitation set forth in the amended claim 1. Applicant respectfully requests withdrawal of the 35 U.S.C. § 102(b) rejection for claim 1.

The claims dependent on independent claim 1, namely claims 2-19, incorporate all of the limitations of claim 1, and therefore are patentable for at least the reasons expressed above. In light of the shortcomings of Young with respect to independent claim 1, Applicant reserves comment with respect to the dependent claims. In reserving comment, Applicant does not acquiesce to the Examiner's interpretations or assertions regarding the dependent claims. Applicant respectfully requests withdrawal of the 35 U.S.C. § 102(b) rejection for dependent claims 2-13 and 15-18.

Further, with respect to claim 3 requires a data prioritizer that determines the priority of the data within the file to be scheduled. Young does not provide teaching of a system that prioritizes the download of different portions of a file in parallel. Moreover, claim 3 requires that the data prioritizer specifies an ordering of the data within the file from a highest priority data to a lowest priority data, and wherein different portions of the file are downloaded in parallel from the two or more of the plurality of servers in accordance with the ordering of the data within the file as specified by the data prioritizer and the download schedule as dynamically adjusted by the prioritization scheduler. Young does not provide teaching of a system that prioritizes and schedules the download of different portions of a file in parallel from different servers.

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<sup>5</sup> Young, col. 2, lines 18-22.

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Moreover, claim 4 that the prioritization scheduler of the parallel download system adjust the download schedule with respect to the different servers while maintaining the prioritization order in which data within the file will be received. Young fails to describe any such system.

Moreover, in the Office Action, the Examiner rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Merkle (US 4,881,264). Applicant respectfully traverses the rejection. Merkle fails to provide any additional teachings to overcome the deficiencies of Young. Claim 14 is allowable insofar as it is dependent upon allowable base claim 1. Applicant reserves the right for further comment regarding claim 14. Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection for claim 14.

**New Claims:**

Applicant has added claims 19-25 to the pending application. The applied references fail to disclose or suggest the inventions defined by Applicant's new claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed inventions. No new matter has been added by claims 19-25.

**CONCLUSION**

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

By:

3/18/2008  
SHUMAKER & SIEFFERT, P.A.  
1625 Radio Drive, Suite 300  
Woodbury, Minnesota 55125  
Telephone: 651.735.1100  
Facsimile: 651.735.1102

Kent J. Sieffert  
Name: Kent J. Sieffert  
Reg. No.: 41,312